MONTANA LEGISLATIVE HISTORY

Chapter 457 1995

Bill H 167 S _____ Original bill & history X C

H. Committee on Edu. & Cul. Res.

Hearing Date(s) 1/20 X C

1/25 X C

_____ C

_____ C

Date Out _____ C

S. Committee on Education

Hearing Date(s) 3/1 X C

3/15 X C

_____ C

_____ C

Did this bill originate in an interim committee? ___ Yes X No

Committee _____ Report _____

3/14	2ND READING CONCURRED	50	0
3/15	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/16	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 216		
	EFFECTIVE DATE: 10/01/95		

HB 166 INTRODUCED BY MCGEE, ET AL.

ALLOW FIRE SERVICE AREAS TO ADOPT A FIRE CODE AND PLAN FOR ENFORCEMENT UPON CERTIFICATION BY DEPARTMENT OF JUSTICE

1/12	INTRODUCED		
1/12	FIRST READING		
1/12	REFERRED TO LOCAL GOVERNMENT		
1/24	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	95	0
2/13	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LOCAL GOVERNMENT		
3/07	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	30	3
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 212		
	EFFECTIVE DATE: 10/01/95		

HB 167 INTRODUCED BY SHEA, ET AL.

PROVIDE FOR SCHOOL DISTRICT COMPLIANCE WITH REQUIREMENTS OF THE FEDERAL GUN-FREE SCHOOLS ACT OF 1994

BY REQUEST OF THE GOVERNOR AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION

1/12	INTRODUCED		
1/12	FIRST READING		
1/12	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/20	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED		
1/31	2ND READING PASSED	73	26
2/01	3RD READING PASSED	73	25
	TRANSMITTED TO SENATE		
2/02	FIRST READING		
2/02	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/01	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	48	0
3/27	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	90	7
4/05	3RD READING AMENDMENTS CONCURRED	83	15

4/08	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 457		
	EFFECTIVE DATE: 07/01/95		

HB 168 INTRODUCED BY ORR

REQUIRE THAT WORKERS' COMPENSATION INSURANCE PREMIUMS AND WEEKLY COMPENSATION BENEFITS FOR VOLUNTEER FIREFIGHTERS BE BASED ON THE NUMBER OF TRAINING HOURS, RESPONSE TIME, AND TIME AT THE EMPLOYER'S PREMISES TIMES THE AVERAGE WEEKLY WAGE DIVIDED BY 40 HOURS

1/12	INTRODUCED		
1/12	FIRST READING		
1/12	REFERRED TO STATE ADMINISTRATION		
1/13	FISCAL NOTE REQUESTED		
1/13	REREFERRED TO BUSINESS & LABOR		
1/18	FISCAL NOTE RECEIVED		
1/21	FISCAL NOTE PRINTED		
2/01	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	2ND READING PASSED	95	2
2/04	3RD READING PASSED	91	2
	TRANSMITTED TO SENATE		
2/06	FIRST READING		
2/06	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/28	HEARING		
3/02	COMMITTEE REPORT—BILL CONCURRED		
3/03	2ND READING CONCURRED	50	0
3/04	3RD READING CONCURRED	42	0
	RETURNED TO HOUSE		
3/07	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 131		
	EFFECTIVE DATE: 07/01/95		

HB 169 INTRODUCED BY ORR, ET AL.

PERMIT DISPENSING OF DANGEROUS DRUGS UPON A PRESCRIPTION OF A PHYSICIAN OR DENTIST LICENSED TO PRACTICE IN ANOTHER STATE

1/12	INTRODUCED		
1/12	FIRST READING		
1/12	REFERRED TO HUMAN SERVICES & AGING		
1/18	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/25	2ND READING PASSED	91	8
1/26	3RD READING PASSED	92	8
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/03	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	50	0
3/16	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/17	SIGNED BY SPEAKER		
3/17	SIGNED BY PRESIDENT		

~~House~~ BILL NO. 167

INTRODUCED BY

BY REQUEST OF THE GOVERNOR AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SCHOOL DISTRICT COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL GUN-FREE SCHOOLS ACT OF 1994; AMENDING SECTION 20-5-202, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-5-202, MCA, is amended to read:

"20-5-202. Suspension and expulsion. (1) As provided in 20-4-302, 20-4-402, and 20-4-403, ~~any~~ a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and ~~to define~~ defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion ~~shall be~~ is a disciplinary action available only to the trustees.

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from

the student's regular school setting."

NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 1995.

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By **CHAIRMAN ALVIN ELLIS JR.**, on January 20, 1995, at 3:20 PM

ROLL CALL

Members Present:

Rep. Alvin A. Ellis, Jr., Chairman (R)
Rep. Peggy Arnott, Vice Chairman (Majority) (R)
Rep. Vicki Cocchiarella, Vice Chairman (Minority) (D)
Rep. Matt Denny (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Dan W. Harrington (D)
Rep. Jack R. Herron (R)
Rep. Joan Hurdle (D)
Rep. Bob Keenan (R)
Rep. Sam Kitzenberg (R)
Rep. Gay Ann Masolo (R)
Rep. Norm Mills (R)
Rep. William Rehbein, Jr. (R)
Rep. John "Sam" Rose (R)
Rep. Debbie Shea (D)
Rep. Richard D. Simpkins (R)
Rep. Diana E. Wyatt (D)

Members Excused: Rep. George Heavy Runner

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Renae Decrevel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 151, HB 167, HB 229
Executive Action:	HB 120-Do Pass as Amended, HB 151-Do Pass

HEARING ON HB 151

Opening Statement by Sponsor:

REP. RAY PECK said that HB 151 allows districts to continue the current practice of accumulating a reserve for the payment of

Questions From Committee Members and Responses:

REP. DICK SIMPKINS asked **REP. RAY PECK** if there was any consideration to cap the amount of sick leave and vacation, to be able to pay it off on a incremental basis instead of leaving it to the very last and finding then a large amount to pay off. **REP. PECK** said that only 1/4 of the sick leave is paid. There is a cap on vacation pay and the amount of vacation depends on the length of service. The absolute maximum is 42 days.

Closing by Sponsor:

REP. RAY PECK said that the bill was good financial management and the biggest thing expressed in legislation is the issue of mandates on local schools and local government. He believes that the provision for the districts to use their cash balance to take care of the mandate needs to be made.

HEARING ON HB 167

Opening Statement by Sponsor:

REP. DEBBIE SHEA said that the bill is very important to all constituent groups in Montana. As a school teacher, she has witnessed the thrilling experience of both tots and teens as they gather in the classroom. Children that enter the classroom with anxieties and fears do not realize the full extent of the education that they are receiving. Unfortunately there are ample distractions in children's lives, whether they are small or large lead to the fear that a classmate may have in his possession a weapon that could kill or maim, disable, and confine the carefree life of himself or his classmates. Throughout the state of Montana school districts have adopted policies that support the essence of the bill. The law will remove the potential of having a district policy challenged by a parent. The rights of gun owners are not being challenged. The challenge is the dreadful fear that prevails without the legislation. "We can never tell when a disaster will happen, but believe me I have witnessed the tragic outcome from parents, teachers and classmates. An outcome that cannot be reversed, an outcome that perhaps will never happen again as a result of the passage of this legislation."

Proponents' Testimony:

Pat Haffey, Senior Policy Advisor for Education in the Governor's Office encouraged support of the bill.

Gail Gray, Office of Public Instruction, said there were three outcomes of the bill. It will send a clear message that adults in Montana have said "enough is enough." It will tell the young people that settling problems with guns is not an option. Secondly it will let everyone know that no matter what life is like at home or on the street or any other place, school is a

safe haven where students and teachers can work together free from fear. Third, it will allow us to remain in compliance with the requirements of the condition of receded funds from the Improving America Schools Act." She urged support of the gun-free school act.

Beth Baker, Department of Justice said that the Attorney General shares the commitment of Governor Racicot and Superintendent Keenan to prevent violence in the schools. "We urge favorable consideration."

Cathy Kendall, Montana Board of Crime Control, said that they encourage adoption of the statute and policy within school environments to be safe and secure while learning.

Michael Keedy, Montana School Board Association, said that the association endorses HB 167. The gun-free school bill became federal law in 1994 and does require state legislation to compel local school districts by October 1995 to enact school policies which require a child with a gun on school property to be expelled for not less than one year. It also allows modification of the expulsion on a case-by-case basis.

Terry Minow, Montana Federation of Teachers, also testifying on behalf of the **Montana Education Association,** said that guns do not belong in schools. "The situation is one that cannot be tolerated. Teachers, students, staff, and parents need and deserve an environment that is free from violence. We aren't suggesting that these students should not be educated, but we are demanding the violent and disruptive students no longer be allowed to disrupt the quality of education for everyone else in the public school system. Montana schools should be a place of learning not a place of violence and intimidation."

Mary Ellerd, Executive Secretary for the Montana Juvenile Probation Offices Association, said "this bill has wholehearted support of the MJPOA."

Loran Frazier, School Administrators of Montana, supports the bill for reasons already given.

Don Waldron, Montana Rural Education Association, said that the bill has all the elements needed. Being able to look at each incident case-by-case is necessary so nobody is doing the wrong thing.

Hank Hudson, Director of the Department of Family Services, spoke in support of the bill.

Opponents' Testimony:

Gary Marbut, President Montana Shooting Sports Association, also affiliated with **National Rifle Association of America, Guns of America,** speaking for **Western Montana Fish and Game Association**

and **Big Sky Practical Shooting Club,** agreed that kids should not be able to take guns to school, and also agreed that schools should be free to adopt policies. They are not convinced that it is necessary to put the federal act into state law. In 1990, Congress passed a Gun free School Zone Act, which makes it a federal crime to take a gun on school grounds. Under Montana law, it is a criminal offence to take a gun into a school building. Schools now have all the authority to adopt a zero tolerance program to keep guns out of the schools. There were two acts passed by Congress in 1994 that are relevant to this. One measure required that for any school to receive federal funding, they have to have the policy adopted and on file with the Superintendent of Public Instruction. The other act stated that if the state were to receive educational funding the state has to pass a law compelling the schools to adopt the policy. Schools today have already adopted the policy. The state gun control law does not need to require what is already required by federal law.

Mary Gay Wells, private citizen, opposed the section the deals with the special disabilities children and how they will be handled if they take a gun to school. She feels it is mandated from the federal government and the state should not be forced to accept that part of the gun free school act in order to receive funding.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DICK SIMPKINS asked **Terry Minow** if the federal government, by imposing their laws, have created a violent situation in the classrooms because of their law. **Terry Minow** answered that some of the restrictions that are contained in that particular piece of national law are restricted in terms of Montana's ability to deal with problem students.

REP. SIMPKINS asked **Loran Frazier** if the school board had the authority to establish rules on expelling students with dangerous weapons. **Mr. Frazier** answered that yes many schools do have the policies.

REP. SIMPKINS stated that he feels that this bill is an insult to the state of Montana because the Congress of the United States doesn't feel that "we care enough about the kids of the school so they impose a law on us to do what has already been done." **Loran Frazier** said that he feels it is a mandate that has come down from Congress and unless the legislation is passed, the districts are going to be burdened with the treat of loss of federal funds.

REP. NORM MILLS asked **Loran Frazier** if there are already state laws that deal with this, why it has to be done in law to satisfy the federal government. **Loran Frazier** said that the 1994

Congress passed a law that said that all school districts must have a gun policy. Then there was a ruling that in order to get federal money, states must also recognize the policy and have a policy on gun control. Basically, that is what the bill is doing.

REP. PEGGY ARNOTT asked **REP. DEBBIE SHEA** to explain what is meant on lines 22 and 23 in regard to a student with a disability. **REP. SHEA** deferred the question to **Gail Gray. Gail Gray** said that under special education guidelines when a student with a disability brings a gun to school, they can be suspended immediately for ten days. During that time it is determined whether or not the disability had any relation to bringing the gun to school. If there is no relation, the student can be suspended for 45 days and provided with alternative education but not in the public school system. If it is determined that the student was not capable of understanding his or her action, the school superintendent would then make the decision. If the student is still considered dangerous, then the action would go to court for an injunction.

REP. SAM ROSE asked **Michael Keedy** if the bill met all the requirements for the federal government. **Michael Keedy** said that yes it does and understands that the term "schools" as stated refers to any property that belongs to the school district.

REP. ROSE said that he does not want to see rural kids with a .22 in the back of their truck trapped by the bill, and asked if they would be. **Michael Keedy** answered that they would not be for the reason that he thought by statutory definition "weapon" does not include a rifle that is used strictly for sporting, recreation, and cultural purposes.

REP. JOAN HURDLE asked if the school parking lot is considered part of the school and could a student bring a truck with a gun in a gun rack and park it there all day. **Michael Keedy** said that the parking lot would be considered school property, but the hunting rifle would not be defined by federal law as a firearm so wouldn't be a concern of this legislation. If it is being used for recreational and sporting purposes it would not be encompassed in the act.

REP. DAN HARRINGTON asked **Geralynn Driscoll** what the definition of a firearm is. **Geralynn Driscoll** read the definition in the federal statute which is found in Title 18, Section 921 which says that all guns are included as weapons.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: .}

REP. ALVIN ELLIS asked **Gail Gray** about disabled children being able to seek readmission after expulsion, and what happens while they are going though the process. **Gail Gray** said that during the ten days, there are no services, but during the 45 days there would have to be some sort of alternative education services.

REP. ELLIS asked if an emotionally and a developmentally disabled student would be handled the same way. **Gail Gray** said that there was no differentiation between the various disabling conditions.

Closing by Sponsor:

REP. SHEA said that she is not the least bit insulted by the federal legislation. Throughout the state, school districts are complying with the essence of the bill and will attest to the fact that it is a desired piece of legislation. The bill affects everyone. "We need to be vigilant in our commitment to make schools a safe haven for children for learning and growing and nurturing our youth. For students, teachers, families and communities please pass this legislation."

HEARING ON HB 229

Opening Statement by Sponsor:

REP. SONNY HANSON said that HB 229 is a real simple bill. It allows the public the right to vote on the kind of higher education system it wants. He quoted an idea proposed by George Burstin, Anaconda Standard editor in 1913. "Pass bills mandating an end to duplication of courses and creating a chancellorship system that would centralize administrative functions in a single office... In 1994, the Governor's Task Force to Renew State Government stated that coordination between K-12 public education and higher education mandated by the constitution has not been achieved for over 80 years, they are still fighting over the same thing, there needs to be a change. He passed out **Exhibit 1.** The university system now operates under Model 1; the bill changes the system and moves it over to Model 4, where the governor will appoint the Chief State School Officer and the state boards of education. The bill replaces the Board of Education, the Board of Regents and the Commissioner of Higher Education with the Department of Education and a State Education Advisory Commission. It is a constitutional amendment that the public would vote on in the 1996 general election. If passed, the 1997 Legislature could create the Department of Education and start the transfer of various higher education functions to the department. **Exhibit #2** was passed out. The bill makes a more accountable, accessible system. **REP. HANSON** read parts of a letter from **Robert K. Ripley**, (informational testimony).

Proponents' Testimony:

Pat Haffey, Senior Policy Advisor for Education, Governor's Office, said they support the recommendation from the task force. They believe that it will offer an opportunity to establish one proficient education agency that will focus primarily on a seamless system of education. It will also provide for one accountable educational agency. It will identify one single

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By **CHAIRMAN ALVIN ELLIS, JR.**, on January 25, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Alvin A. Ellis, Jr., Chairman (R)
Rep. Peggy Arnott, Vice Chairman (Majority) (R)
Rep. Vicki Cocchiarella, Vice Chairman (Minority) (D)
Rep. Matt Denny (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Dan W. Harrington (D)
Rep. Jack R. Herron (R)
Rep. Joan Hurdle (D)
Rep. Bob Keenan (R)
Rep. Sam Kitzenberg (R)
Rep. Gay Ann Masolo (R)
Rep. Norm Mills (R)
Rep. William Rehbein, Jr. (R)
Rep. John "Sam" Rose (R)
Rep. George Heavy Runner (D)
Rep. Debbie Shea (D)
Rep. Richard D. Simpkins (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Patti Borneman, Substitute Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 228
Executive Action: HB 125 TABLED, HB 167 DO PASS

years, "we wouldn't be spending $40 million on new prisons and jails."

REP. WYATT asked if there was a Montana index to attach to the bill, and maybe it would aid in bringing about consensus.

REP. MILLS said that he agreed there should be an index developed and thought it should be done before they meet again. He said he has found none that is meaningful. "We need a Montana index, because a lot of things could be tied to it."

{Tape: 3; Side: A}

REP. KITZENBERG said he appreciated what **REP. MILLS** said: "if we don't put this money into education, we're going to probably be putting it into a lawsuit, and I would rather see the money spent on education." He stated that he is open to changing the index to the "regional indexing factor." He asked **Andrea Merrill** the name of the regional indexing factor.

Andrea Merrill said she didn't know the name, but said it does exist and they can find it in a Bureau of Labor Statistics book.

CHAIRMAN ELLIS said that the Bureau of Business Research at the university puts out a Montana CPI. He said that almost any national publication today, such as TIME, Newsweek and newspapers "acknowledges that COLAs put into entitlement are driving those costs up faster than what studies indicate are justified." He said he is opposed to the idea because he said that "communities have the authority to raise funding in excess of what the CPI is" and said it may be less than three percent at this time. He said that he thinks that it is critical that we continue to work towards equalization.

REP. SIMPKINS said that if the base amount is raised, the state is going to have to put in more money. The problems on equalization are not being addressed.

REP. KITZENBERG said that one of the important issues is that this is the only vehicle that is available for extra funding for education, he would like to keep it alive until the end of the session. The concern that was presented is that if nothing is done by the end of the next biennium there will be between a 16-18% decrease in real dollars to schools.

Motion/Vote: REP. KITZENBERG MOVED TO TABLE HB 125. Motion carried 12-6.

EXECUTIVE ACTION ON HB 167

Motion: REP. SIMPKINS MOVED TO AMEND HB 167.

Discussion:

REP. SHEA said that the schools need to be secured from those with guns and the bill alone does that.

REP. HARRINGTON said that he is not voting for the bill because the federal government is forcing him to, but because there are a lot of problems in the schools. The bill is going through because there is a serious problem in not only the state, but in the country.

REP. MILLS said that he is concerned that the law does not include the banning of other weapons besides guns. Even taking a gun to school in the back of a truck would be wrong.

REP. SIMPKINS said that the amendment is for maintaining local control and avoiding dictates by the federal government.

Vote: The amendment failed 8-10.

Discussion: **REP. ARNOTT** asked **REP. SHEA** about different weapons being used besides a gun and since the federal law does not address that, what would happen when one is brought to school? **REP. SHEA** said that the bill backs up all the district policies in the state.

REP. COCCHIARELLA stated that a student in Arlee brought a BB gun to school intending to use it in a fight. His parents denied the fact that he brought a weapon to school. When asked where he got it, he said that he got it at home. The student was not reprimanded in any way because the school could not determine if a BB gun is a weapon. If the child would have had an AK 47, that is the gun he would have brought. The bill is an effort to get at situations like that.

Motion/Vote: DO PASS HB 167. Motion carried 14-4, with REPS. KEENAN, MILLS, REHBEIN, AND SIMPKINS voting no.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By **VICE-CHAIRMAN JOHN HERTEL**, on March 1, 1995, at 3:30 p.m.

ROLL CALL

Members Present:
Sen. Daryl Toews, Chairman (R)
Sen. John R. Hertel, Vice Chairman (R)
Sen. C.A. Casey Emerson (R)
Sen. Delwyn Gage (R)
Sen. Loren Jenkins (R)
Sen. Kenneth "Ken" Mesaros (R)
Sen. Steve Doherty (D)
Sen. Gary Forrester (D)
Sen. Barry "Spook" Stang (D)

Members Excused: Sen. Mignon Waterman (D)

Members Absent: N/A

Staff Present: Eddye McClure, Legislative Council
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 300, HB 77, HB 167
Executive Action: None

HEARING ON HB 300

VICE-CHAIRMAN JOHN HERTEL CHAIRED THE MEETING IN THE ABSENCE OF CHAIRMAN DARYL TOEWS

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, Townsend, said **HB 300** adds six more counties to the seismic risk zone and requires schools within that zone to establish and implement an earthquake emergency plan. She said since schools are required to conduct eight fire drills per school year, earthquake emergency drills could be

impossible. The definition of a homeless child is one who does not have permanent shelter for the night.

SEN. EMERSON asked if there were school districts who did not waive tuition for homeless children. **REP. COCCHIARELLA** said she had found none who were charging for homeless children.

Closing by Sponsor:

REP. COCCHIARELLA expressed hope that something can be done for those who are identified as homeless through the change of a law which is not currently being practiced. She stressed the fact this bill does not provide money, but does provide opportunities for districts to help these children.

HEARING ON HB 167

Opening Statement by Sponsor:

REP. DEBBIE SHEA, HD 35, Butte, said she sponsored **HB 167** at the request of the Governor's Office and the Office of Public Instruction. **REP. SHEA** said **HB 167** was so important to Montana and its students, she was confident bipartisanship would prevail.

REP. SHEA said school districts throughout Montana have adopted the essence of **HB 167**, but passing of time and changing of school boards and administrators caused these policies to change also. She said one of the intents of **HB 167** was to address and resolve case-by-case situations as school districts see fit. However, only when **HB 167** is enacted into law, will the consistent uniform enforcement of adopted school district policies have the teeth to make local policies succeed. **REP. SHEA** said **HB 167** will remove the potential of having the district policy challenged by a disgruntled parent and will force them to challenge the law.

REP. SHEA stated no gun ownership rights are being challenged in **HB 167**; rather, the challenges are the fears which prevail in the school without the passing of **HB 167.**

Proponents' Testimony:

Pat Haffey, Senior Policy Advisor for Education, Governor's Office, expressed support for **HB 167.** She said the Governor's Office had worked with the Office of Public Instruction, Department of Family Services and the general public. All believe **HB 167** is a good bill.

Gail Gray, Assistant Superintendent of Public Instruction, said **HB 167**, if passed, will do three things: (1) Send a very clear message from the adults of Montana that settling problems with guns is not an option; (2) Let everyone know school is a safe haven in spite of what life is like at home or on the street; (3)

Allow compliance with the Federal Elementary and Secondary Education Act (ESEA) which requires a law such as **HB 167** to be in place before federal funds are received. **Ms. Gray** explained Montana receives approximately $50 million in federal monies which would be jeopardized if Montana did not have a gun-free law. She urged support for **HB 167**.

Beth Baker, Department of Justice, said Attorney General Mazurek shared the commitment of Governor Racicot and Superintendent Keenan to keep violence from our schools. **Ms. Baker** said last fall both Attorney General Mazurek and Superintendent Keenan conducted five community forums across the state to listen to people as they talked about youth violence. They learned in Missoula, during the past year, police had been called to every middle and high school in the district to respond to calls regarding weapons in these schools. She said **HB 167** sends a positive and constructive message and asked the committee's support.

Michael Keedy, Montana School Boards Association (MSBA), declared MSBA's support for **HB 167** without exception or reservation. He recounted how the 1965 ESEA was amended and extended by The Improving America's Schools Act (IASA) in 1994, and the change included a gun-free schools law which requires legislation such as **HB 167**. **Mr. Keedy** said the continuation of federal public education funds is contingent upon legislation which requires school districts to adopt policies calling for at least one year's expulsion of students who bring firearms onto school property. In addition, these students must be referred to local law enforcement agencies or juvenile justice systems, depending on the student's age. IASA also requires school districts to allow the chief administrative officer to provide exceptions to the expulsion policy on a case-by-case basis. **Mr. Keedy** applauded **REP. SHEA'S** fashioning of **HB 167** which provides exactly what gun-free schools requires. He pointed out **HB 167** is a response to a federal mandate, which is passed to local school boards; however, MSBA supports **HB 167** because the policy embodied in the bill is sound and sensible in that it addresses the increasing incidents of violence at a younger age.

Mr. Keedy said the fiscal note is reverse because if **HB 167** is not enacted, Montana will lose a minimum of $40 million per year in federal funds for public education.

Terry Minow, Montana Federation of Teachers (MFT), (also testifying for Montana Education Association (MEA), said MFT and MEA strongly support **HB 167** because guns do not belong in schools. **Ms. Minow** said guns and the fear they raise cannot be tolerated within our schools. Teachers, students, staff and parents need a learning environment which is free from the threat of violence. She said support for **HB 167** was support for schools, teachers, staff, students and parents.

Mary Alice Cooper, Advocates for Montana's Children, said she, as a former teacher, strongly urged DO PASS for **HB 167** for the protection of all.

Christine Kaufmann, Montana Human Rights Network, said the Human Rights Network celebrated diversity and countered bigotry, hatred and intolerance. Very often, school conflicts center on intolerance of differences and diversity. She said teachers are encouraged to incorporate diversity training into the curriculum and to provide training in non-violent resolutions of conflicts. **Ms. Kaufmann** said schools were encouraged to have processes in place to handle conflicts in a democratic manner where all voices can be heard and respected; however, when bullies have guns, peaceful resolution is almost impossible. She urged support for **HB 167.**

Loran Frazier, School Administrators of Montana (SAM), (also testifying for Montana Rural Education Association (MREA), said the number of violent incidences is increasing; therefore, he urged support for HB 167.

Frank Kromkonski, Department of Family Services (DFS) and Director Hank Hudson, expressed support for **HB 167,** saying DFS worked with both the Governor's Office and OPI in the drafting of the bill.

Opponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, Guns of America, Citizens Committee of the Right to Bear Arms, Western Montana Fish & Game Association, Big Sky Pack and Shooting Club, said his organizations reluctantly opposed **HB 167,** because guns should not be taken to school, except in certain circumstances. He distributed copies of SJR 15 & SJR 16, saying both were adopted by the 1989 legislature **(EXHIBIT 6)** and were examples of the exceptions. **Mr. Marbut** said the real reason for opposition to **HB 167** is no new school authority is created because schools already have it through two 1994 federal acts.

Mr. Marbut referred to laws which already cover **HB 167**: (1) Federal law, Gun-Free School Zones Act, which allows federal prosecution for anyone bringing a gun to school; (2) **45-8-328** makes it unlawful to bring guns into a public building; (3) **45-8-316** allows prosecution for concealed firearms; (4) **45-8-351** authorizes cities to enact ordinances preventing persons from taking firearms into public buildings.

Mr. Marbut said **HB 167** is not about student safety, but about potholes on the road to federal funding. He expressed opposition for **HB 167.**

Steve Knobel, School Board Trustee, Manhattan, MT, said his concern was the federal government's definition of a firearm, explaining it could include such things as a squirt gun, Boy

Scout knife, etc. He asked the committee to consider the above carefully before making a decision on **HB 167.** He expressed concern federal funding may become more tightly tied to further restrictions and mandates. He stated he would like to see the acceptance of federal monies stopped.

{Tape: 1; Side: B;}

Alfred "Bud" Elwell, Weapons Collectors Society of Montana & Northwest Arms Collectors, echoed **Gary Marbut's** testimony there already are laws to cover the content of **HB 167.** He said he considered **HB 167** a negative testing ground for things to come and urged DO NOT PASS for **HB 167.**

Questions From Committee Members and Responses:

SEN. MESAROS asked the definition of "school." **REP. SHEA** said it was to be defined at the local level, i.e. school building itself, parking lot, playground, etc. SEN. MESAROS said his concern was rural areas and the potential problems, i.e. guns in a pickup. **REP. SHEA** claimed local definition as well as case-by-case decisions in dealing with such a problem and recounted how both are included in **HB 167.**

SEN. EMERSON related he taught school for 28 years and never during that time was it lawful to bring knives or guns to school. He wondered if schools no longer have such authority, even without **HB 167. REP. SHEA** said federal laws cover the bringing of such articles to school; however, what is needed is a law which clearly states expulsion from school for a calendar year will be the punishment.

SEN. EMERSON said the 1995 legislative session has been trying to decrease government controls and mandates while attempting to increase local control. He wondered if **REP. SHEA** considered **HB 167** a mandate from the federal government to the legislature to the school districts. She replied **HB 167** could be considered a mandate and the federal monies which come with the mandate are important; however, the bottom line is keeping our schools safe.

SEN. JENKINS asked for clarification regarding local school board authority mentioned in **SEN. MESAROS'** testimony as opposed to the above-mentioned mandate. **REP. SHEA** said school districts have the option of setting parameters.

SEN. JENKINS said he still had a question regarding the line between local control and the mandate. **Gail Gray** said **HB 167** clearly states once the local board establishes its policy, convicted students will be expelled; however, the questionable issue is the definition of "school."

SEN. JENKINS asked if the above was defined in **18 U.S.C. 921. Gail Gray** said the school area was not defined, though weapons were.

SEN. JENKINS said he could not see where **HB 167** defined "school", and he was having a problem mandating a school adopt **HB 167** without defining what "school" was. **Gail Gray** said that particular wording was intentionally chosen to coincide with the federal wording, which did not define "school."

SEN. JENKINS wanted clarification regarding school boards optionally defining the school building as "school", so if a student brings a firearm into the building, he or she would be expelled. **Gail Gray** said **HB 167** intended "school" to be at least a building; expanding the definition was left to local school boards.

SEN. JENKINS also asked for affirmation of his understanding school boards already have the authority not to allow guns on school property, but what is needed is a law stating a student will be expelled for a year if he or she brings a firearm to school. **Gail Gray** affirmed.

SEN. DOHERTY said one-year expulsion is clear, and wondered if the school board's authority to make exceptions was just as clear. **Gail Gray** concurred.

SEN. GAGE asked if federal standards clarify whether each state must have an expulsion law or local school districts must have an expulsion policy. **Gail Gray** said federal law clearly says each state must have a law.

SEN. GAGE asked where the language for **HB 167** came from. **Gail Gray** answered it came from the federal statutes, and further explained the specific language came from a committee composed of members from the Attorney General's Office, the Office of Public Instruction, the Governor's Office and other educational players in Helena.

SEN. GAGE referred to page 1, line 22, of **HB 167** and asked for clarification of "change the placement of a student with a disability...." and wondered if its meaning was changing placement of a student with a disability for any reason. **Gail Gray** said it specifically referred to students under IDEA, which means they will be expelled for 45 days and during that time, the school must come up with another plan.

Closing by Sponsor:

REP. SHEA said **HB 167** belonged to everyone, not just special interest groups. Vigilance was needed to make schools safe learning havens for youth. She urged DO PASS for **HB 167.**

REP. SHEA said **SEN. JOHN "J.D." LYNCH** agreed to carry **HB 167.**

paid the entire cost. **SEN. WATERMAN** said there were controls within MRM; in fact, currently there were 11-14 out-of-state placements as compared to 120 two years ago.

SEN. JENKINS wanted clarification of the Kalispell child being covered 100% by Federal dollars. **SEN. WATERMAN** affirmed.

SEN. STANG asked if payment was from Federal special ed funds designated entirely for that purpose or if the dollars were taken from other students who might need the services. **SEN. WATERMAN** said she thought it was taken from funds which would serve other students if it wasn't serving that particular Kalispell student.

SEN. WATERMAN commented if this situation had happened today, the child would have been served from the MRM process. **Robert Runkel** said it was probably correct; however, if MRM did not want to be involved, the school would need to make a special ed program available for the child.

Motion/Vote: SEN. DELWYN GAGE MOVED TO TABLE HB 110. Motion **CARRIED** on a 8-2 voice vote, with **SEN. FORRESTER** and **SEN. EMERSON** voting "No."

EXECUTIVE ACTION ON HOUSE BILL 167

Motion: SEN. KEN MESAROS MOVED HB 167 BE CONCURRED IN.

Discussion: SEN. GAGE referred to Page 1, Line 22, and suggested "who has been expelled pursuant to this section" follow "disability."

Motion/Vote: SEN. DELWYN GAGE MOVED TO ADOPT THE ABOVE AMENDMENT (EXHIBIT 3). Motion **CARRIED** by **UNANIMOUS** voice vote.

Motion/Vote: SEN. DELWYN GAGE MOVED HB 167 AS AMENDED BE CONCURRED IN. Motion **CARRIED** by **UNANIMOUS** voice vote.

SEN. J. D. LYNCH will carry **HB 167.**

EXECUTIVE ACTION ON HOUSE BILL 228

Motion: SEN. BARRY "SPOOK" STANG MOVED HB 228 BE NOT CONCURRED IN.

Discussion: SEN. EMERSON commented since HB 229 will be on the ballot as a Constitutional Amendment, HB 228 should be also.

SEN. WATERMAN countered there was no obligation to send **HB 228** out because there was enough testimony to substantiate **HB 228** not

MONTANA SENATE
1995 LEGISLATURE
EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL DATE 3/15/95

NAME	PRESENT	ABSENT	EXCUSED
SEN. JOHN HERTEL, VICE CHAIRMAN	✓		
SEN. DELWYN GAGE	✓		
SEN. KEN MASAROS	✓		
SEN. STEVE DOHERTY	✓		
SEN. MIGNON WATERMAN	✓		
SEN. BARRY "SPOOK" STANG	✓		
SEN. LOREN JENKINS	✓		
SEN. GARY FORRESTER	✓		
SEN. C.A. CASEY EMERSON	✓		
SEN. DARYL TOEWS, CHAIRMAN	✓		

SEN:1995
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SENATE EDUCATION
EXHIBIT NO. 3
DATE 3/15/95
BILL NO. HB 167

Amendments to House Bill No. 167
Third Reading Copy

For the Senate Committee on Education and Cultural Resources

Prepared by Eddye McClure
March 15, 1995

1. Page 1, line 22.
Following: "disability"
Insert: "who has been expelled pursuant to this section"

SENATE STANDING COMMITTEE REPORT

March 16, 1995

MR. PRESIDENT:
We, your committee on Education and Cultural Resources having had under consideration HB 167 (third reading copy -- blue), respectfully report that HB 167 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Daryl Toews, Chair

That such amendments read:

1. Page 1, line 22.
Following: "disability"
Insert: "who has been expelled pursuant to this section"

-END-

Amd. Coord.
Sec. of Senate

Sen J. D. Lynch
Senator Carrying Bill

611000SC.SPV

HOUSE BILL NO. 167

INTRODUCED BY SHEA, BROOKE, PAVLOVICH, QUILICI, BOHLINGER, HEAVY RUNNER, PIPINICH, RYAN, SOFT, HERRON, HARRINGTON, GALVIN, WYATT, MENAHAN, L. SMITH, SWANSON, CAREY, HURDLE, ROSE, HIBBARD, FORRESTER, REAM, ELLINGSON, COCCHIARELLA, FORBES, LYNCH, MCGEE, VAN VALKENBURG, JACOBSON, HAGENER, KOTTEL

BY REQUEST OF THE GOVERNOR AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SCHOOL DISTRICT COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL GUN-FREE SCHOOLS ACT OF 1994; AMENDING SECTION 20-5-202, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-5-202, MCA, is amended to read:

"**20-5-202. Suspension and expulsion.** (1) As provided in 20-4-302, 20-4-402, and 20-4-403, ~~any~~ a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and ~~to define~~ defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion ~~shall be~~ is a disciplinary action available only to the trustees.

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability WHO HAS BEEN EXPELLED PURSUANT TO THIS SECTION must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting."

NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 1995.

-END-